

REMARKS

Upon entry of this amendment, claims 1-15, 48, and 49 constitute the pending claims in the present application. Applicants have canceled claims 16-47 and 50-68 without prejudice. Applicants reserve the right to prosecute claims of identical or similar scope in future applications.

Applicants have also amended claims 1, 14 and 15 to clarify the subject matter claimed. Applicants submit that such amendments do not narrow the scope of the amended claims.

Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the Office Action.

Election / Restrictions

The Office Action makes the Restriction Final, and withdraws claims 16-68 from further consideration. However, without addressing the other merits of the reasoning of the Office Action, Applicants respectfully point out that at least claims 48 and 49 were previously mis-Grouped in Group III, since these two claims dependent on independent claim 1 of the elected Group I, rather than any Group III claims. Therefore, at least these two claims should be rejoined with the elected Group I claims for further examination. Reconsideration and withdrawal of the Restriction, at least as applied to these two claims, are respectfully requested.

Objection to Claim 1

The Office Action objected to claim 1 for reciting the allegedly vague term “perpendicular directions.”

Applicants submit that the Office Action mis-quoted the term by omitting the preceding words “three mutually,” which provides the allegedly missing “frame of reference.” Applicants submit that a skilled artisan would appreciate the ordinary meaning of the phrase as used to describe the three axes of movement of a real world object. Requiring Applicants to provide any other “reference points” is unnecessary and would unduly limit the

scope of the claimed invention. Reconsideration and withdrawal of the objection are respectfully requested.

Rejection of Claim 1 under 35 USC § 102(e) in view of Gross et al. (U.S. Pat. No. 6,595,956; Reference A)

Claim 1 is rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Gross *et al.* (U.S. Patent No. 6,595,956; Reference A). The Office Action alleges that Figures 22, 24, and 25 of Gross anticipate the claimed invention. Applicants respectfully disagree; Gross at least fails to teach a microprobe being configured to move substantially freely in three mutually perpendicular directions.

Referring to Figure 22 of Gross, it appears that the Examiner believes that needle 127 may correspond to (at least part of) the microprobe of the claim invention. Due to the rigid construction of the needle sterility cover 127, the piston outer recess 126, and the slidable engagement of piston 125 to the inner wall of cartridge 122, needle 127 can only move in one direction (i.e., toward the distal end of cartridge 122). Referring to Figure 24, needle 134, which is connected to needle 127 through flexible tubing 130, is inside activation assembly 163. Needle 134 apparently is fixed relative to button 164, and can only move up and down inside a shaft occupied by spring 166. There is no indication that the direction of movement of needle 134 can be two-dimensional in any sense. Thus, even if the up and down movement of needle 134 is perpendicular to the movement direction of needle 127, and even if needle 127, tubing 130, and needle 134 can be considered the equivalent of the subject microprobe, it cannot be said that the “microprobe” disclosed in Gross is “configured to move substantially freely in three mutually perpendicular directions.”

Therefore, Gross fails to teach each and every limitation of the claimed invention, and cannot anticipate the claimed invention. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(e) are respectfully requested.

Rejection of Claims 2-15 under 35 USC § 103(a) as being unpatentable over Gross et al. (U.S. Pat. No. 6,595,956; Reference A) in view of Shentag et al. (U.S. Pat. No. 5,279,607; Reference C), Maget et al. (U.S. Pat. No. 4,902,278; Reference D), and Haller et al. (U.S. Pat. No. 6,048,328; Reference B)

Claims 2-15 are rejected under 35 USC § 103(a) as allegedly unpatentable over Gross *et al.* (U.S. Pat. No. 6,595,956) in view of Shentag *et al.* (U.S. Pat. No. 5,279,607), Maget *et al.* (U.S. Pat. No. 4,902,278), and Haller *et al.* (U.S. Pat. No. 6,048,328). The Office Action alleges that Gross fails to teach the use of a pump having a gas generating source comprising an electrochemical cell, while Shentag, Maget and Haller allegedly teach that the use of electrochemical cells is conventional in the art.

Applicants submit that Gross also fails to disclose a microprobe configured to move substantially freely in three mutually perpendicular directions as discussed in more detail above, and that this omission is not cured by the additional references.

Shentag relates to an ingestible radio-controlled capsule for delivery, particularly repeatable delivery, of a medicament to the alimentary canal of a patient (See abstract). There is no disclosure of any microprobe extending from a fluid reservoir, let alone one that can move substantially freely in three mutually perpendicular directions. Applicants note that rupture pin 46 is not in fluid communication with the fluid reservoir – it merely functions to rupture the diaphragm separating reactants (see Figures 4 and 5).

Maget relates to a module used in a fluid delivery micropump, especially for pharmaceutical purposes (See abstract). Maget also fails to teach or suggest a microprobe extending from a fluid reservoir and which is capable of moving substantially freely in three mutually perpendicular directions.

Haller relates to an implantable medical pump featuring a low power multi-stable valve (see Abstract). There is no disclosure of any microprobe extending from a fluid reservoir, let alone one that can move substantially freely in three mutually perpendicular directions.

Shentag, Maget and Haller allegedly teach the use of electrochemical cells, which, even if true, does not correct the defect of Gross. Thus even assuming *arguendo* that an ordinarily skilled artisan would be motivated to combine Gross with Shentag, Maget and/or Haller, the combined teaching still fails to teach or suggest all the limitations of the claimed invention. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) are respectfully requested.

CONCLUSION

For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the pending rejections. Applicants believe that the claims are now in condition for allowance and early notification to this effect is earnestly solicited. Any questions arising from this submission may be directed to the undersigned at (617) 951-7000.

If there are any other fees due in connection with the filing of this submission, please charge the fees to our **Deposit Account No. 18-1945**. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit account.

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